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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,726	09/30/2003	Joshua S. Allen	RSW920030148US1 8152-0036	6352

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EXAMINER	
DONABED, NINOS J	

ART UNIT	PAPER NUMBER
2444	

NOTIFICATION DATE	DELIVERY MODE
08/16/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/675,726	ALLEN ET AL.	
	Examiner	Art Unit	
	NINOS DONABED	2444	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 March 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *24-27,29-32 and 34-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *24-27,29-32 and 34-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 September 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Response to Amendment

This communication is in response to Applicant's supplemental amendment dated 3/31/2011. Claim(s) 28, 33, 38 has/have been cancelled. Claim(s) 24, 29, 34 has/have been amended. Claims 39-44 have been added. Claim(s) 24-27, 29-32, 34-37 is/are pending in the application. The Final action dated 4/11/2011 is hereby vacated for this Final action as that action and the supplemental amendment were crossed.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 34-37 are rejected under 35 U.S.C. 101. Regarding claim 34, the "machine readable storage" is geared towards both statutory and non-statutory subject matter (i.e. signal per se). Since the "machine readable storage medium" is not defined in Applicant's specification. Therefore, Examiner's broadest reasonably interpretation of "machine readable storage" would include a signal per se. Thus, Claim 34 is rejected under USC 101. Claims 35-37 are rejected for being dependent on claim 34.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 24-27, 29-32, 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasawa (United States Patent Application Publication 20020116234) in view of Betge (United States Patent Application Publication 20050177629).

Regarding claim 24,

Nagasawa teaches a computer hardware system for estimating a service level agreement (SLA) breach value for a resource, comprising:

a performance history database including historical performance data for the resource; and **(See figures 1-2 and paragraphs [0058] – [0062], Nagasawa teaches a database containing performance data for resources)**

at least one computer hardware device coupled to the performance history database, wherein the at least one computer hardware device is configured to: **(See paragraphs [0047] – [0051], Nagasawa teaches a computer coupled to the database)**

retrieve the historical performance data for the resource, and **(See paragraphs [0058] – [0062], Nagasawa teaches retrieving performance data for the resource)**

Nagasawa does not explicitly teach generate the estimated SLA breach value by processing the historical performance data for the resource.

Betge teaches generate the estimated SLA breach value by processing the historical performance data for the resource. **(See paragraphs [0046] – [0050], Betge)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Betge with Nagasawa because both deal with optimizing resources and SLA within a network system. The advantage of incorporating generate the estimated SLA breach value by processing the historical performance data for the resource of Betge into Nagasawa is that allows optimum development of network configurations avoiding both over dimensioning and failure to meet SLAs (Service Level Agreements). It allows creation of planning proposals based on both network data and customer resource and service requirements thus making the system more robust and efficient. **(See paragraphs [0005] - [0008], Betge)**

Regarding claim 25,

Nagasawa and Betge teach the computer hardware system of claim 24, wherein the at least one computer hardware device is configured to build a SLA. **(See paragraphs [0048] – [0050], [0078], Betge)** See motivation to combine for claim 24.

Regarding claim 26,

Nagasawa and Betge teach the computer hardware system of claim 24, wherein the at least one computer hardware device is configured to generate a chart, the chart includes the historical performance data for the resource and a current SLA breach value setting. **(See paragraphs [0070] – [0078], Betge)** See motivation to combine for claim 24.

Regarding claim 27,

Nagasawa and Betge teach the computer hardware system of claim 26, wherein the at the at least one computer hardware device is configured to receive a proposed SLA breach value setting and regenerate the chart to included the proposed SLA breach value setting. **(See paragraphs [0048] – [0050], [0078], Betge)** See motivation to combine for claim 24.

Regarding claim 29,

Nagasawa teaches a method for estimating a service level agreement (SLA) breach value for a resource, comprising: **(See abstract, Nagasawa)**

retrieving historical performance data for the resource from a performance history database; **(See figures 1-2 and paragraphs [0058] – [0062], Nagasawa teaches a database containing performance data for resources)**

Nagasawa does not explicitly teach generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and displaying, using the computer hardware system, the estimated SLA breach value.

Betge teaches generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and . **(See paragraphs [0046] – [0050], Betge)**

displaying, using the computer hardware system, the estimated SLA breach value. . **(See paragraphs [0046] – [0050], Betge)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Betge with Nagasawa because both deal with optimizing resources and SLA within a network system. The advantage of incorporating generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and displaying, using the computer hardware system, the estimated SLA breach value of Betge into Nagasawa is that allows optimum development of network configurations avoiding both over dimensioning and failure to meet SLAs (Service Level Agreements). It allows creation of planning proposals based on both network data and customer resource and service requirements thus making the system more robust and efficient. **(See paragraphs [0005] - [0008], Betge)**

Regarding claim 30,

Nagasawa and Betge teach the method of claim 29, wherein the historical performance data is based upon an aggregation of customers accessing the resource. **(See paragraphs [0047] – [0049], Betge)** See motivation to combine for claim 29

Regarding claim 31,

Nagasawa and Betge teach the method of claim 29, wherein the historical performance data is based upon a single specific customer accessing the resource. **(See paragraphs [0023] – [0026], Betge)** See motivation to combine for claim 29

Regarding claim 32,

Nagasawa and Betge teach the method of claim 29, wherein the generating comprises identifying an SLA breach value trend based upon the historical performance data; and predicting a future SLA breach value based upon the trend. **(See paragraphs [0048] – [0050], [0078], Betge)** See motivation to combine for claim 29.

Regarding claim 34,

Nagasawa teaches a machine readable storage having stored therein computer program code for estimating a service level agreement (SLA) breach value for a resource, the computer program code, which when executed by a computer hardware system, causes the computer hardware system to perform: **(See abstract, Nagasawa)**

retrieving historical performance data for the resource from a performance history database; **(See figures 1-2 and paragraphs [0058] – [0062], Nagasawa teaches a database containing performance data for resources)**

Nagasawa does not explicitly teach generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and displaying, using the computer hardware system, the estimated SLA breach value.

generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and **(See paragraphs [0046] – [0050], Betge)**

displaying, using the computer hardware system, the estimated SLA breach value. **(See paragraphs [0046] – [0050], Betge)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Betge with Nagasawa because both deal with optimizing resources and SLA within a network system. The advantage of incorporating generating, with a computer hardware system, the estimated SLA breach value by processing the historical performance data for the resource; and displaying, using the computer hardware system, the estimated SLA breach value of Betge into Nagasawa is that allows optimum development of network configurations avoiding both over dimensioning and failure to meet SLAs (Service Level Agreements). It allows creation of planning proposals based on both network data and customer resource and service requirements thus making the system more robust and efficient. **(See paragraphs [0005] - [0008], Betge)**

Regarding claim 35,

Nagasawa and Betge teach the machine readable storage of claim 34, wherein

the historical performance data is based upon an aggregation of customers accessing the resource. **(See paragraphs [0047] – [0049], Betge)** See motivation to combine for claim 29

Regarding claim 36,

Nagasawa and Betge teach the e machine readable storage of claim 34, wherein the historical performance data is based upon a single specific customer accessing the resource. **(See paragraphs [0023] – [0026], Betge)** See motivation to combine for claim 29.

Regarding claim 37,

Nagasawa and Betge teach the machine readable storage of claim 34, wherein the generating comprises identifying an SLA breach value trend based upon the historical performance data; and predicting a future SLA breach value based upon the trend. **(See paragraphs [0048] – [0050], [0078], Betge)** See motivation to combine for claim 29.

4. Claims 39-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nagasawa (United States Patent Application Publication 20020116234) in view of Betge (United States Patent Application Publication 20050177629) further in view of Monga (U.S. Patent Number 7437449).

Regarding claim 39,

Nagasawa and Betge teach the computer hardware system of claim 24.

Nagasawa and Betge do not explicitly teach wherein the at least one computer hardware device is configured to generate, using a compliance percentage, the estimated SLA breach value.

Monga teaches wherein the at least one computer hardware device is configured to generate, using a compliance percentage, the estimated SLA breach value. **(See column 2, lines 15-35, Monga teaches "interact with a service provider to negotiate "replacement" services for a breach of the SLA, interact with various network elements to rectify a breach of the SLA, interact with the service provider to dynamically modify the SLA based upon changing user requirements")**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Monga with Nagasawa and Betge because both deal with service level agreements and breaches. The advantage of incorporating wherein the at least one computer hardware device is configured to generate, using a compliance percentage, the estimated SLA breach value of Monga into Nagasawa and Betge is that the system interacts with the network to obtain and manage various communication services for the user based upon predetermined parameter thus making the system more robust and efficient. **(See column 1, Monga)**

Regarding claim 40,

Nagasawa and Betge teach the computer hardware system of claim 24.

Nagasawa and Betge do not explicitly teach wherein the estimated SLA breach value is a predicted value by which a predetermined compliance percentage can be achieved by employing the estimated SLA breach value with a service level agreement associated with the resource.

Monga teaches wherein the estimated SLA breach value is a predicted value by which a predetermined compliance percentage can be achieved by employing the estimated SLA breach value with a service level agreement associated with the resource. **(See column 2, lines 15-35 and column 4 lines 25-40, Monga)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Monga with Nagasawa and Betge because both deal with service level agreements and breaches. The advantage of incorporating wherein the estimated SLA breach value is a predicted value by which a predetermined compliance percentage can be achieved by employing the estimated SLA breach value with a service level agreement associated with the resource of Monga into Nagasawa and Betge is that the system interacts with the network to obtain and manage various communication services for the user based upon predetermined parameter thus making the system more robust and efficient. **(See column 1, Monga)**

Regarding claim 41,

Nagasawa and Betge teach the method of claim 29.

Nagasawa and Betge do not explicitly teach wherein the generating comprise receiving a compliance percentage; and computing said estimated SLA breach value based upon the compliance percentage.

Monga teaches wherein the generating comprise receiving a compliance percentage; and computing said estimated SLA breach value based upon the compliance percentage. **(See column 2, lines 15-35, Monga teaches "interact with a service provider to negotiate "replacement" services for a breach of the SLA, interact with various network elements to rectify a breach of the SLA, interact with the service provider to dynamically modify the SLA based upon changing user requirements")**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Monga with Nagasawa and Betge because both deal with service level agreements and breaches. The advantage of incorporating wherein the generating comprise receiving a compliance percentage; and computing said estimated SLA breach value based upon the compliance percentage of Monga into Nagasawa and Betge is that the system interacts with the network to obtain and manage various communication services for the user based upon predetermined parameter thus making the system more robust and efficient. **(See column 1, Monga)**

Regarding claim 42,

Nagasawa and Betge teach the method of claim 29,

Nagasawa and Betge do not explicitly teach wherein the estimated SLA breach value is a predicted value by which a predetermined compliance percentage can be achieved by employing the estimated SLA breach value with a service level agreement associated with the resource.

Manga teaches wherein the estimated SLA breach value is a predicted value by which a predetermined compliance percentage can be achieved by employing the estimated SLA breach value with a service level agreement associated with the resource. **(See column 2, lines 15-35 and column 4 lines 25-40, Monga)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Monga with Nagasawa and Betge because both deal with service level agreements and breaches. The advantage of incorporating wherein the estimated SLA breach value is a predicted value by which a predetermined compliance percentage can be achieved by employing the estimated SLA breach value with a service level agreement associated with the resource of Monga into Nagasawa and Betge is that the system interacts with the network to obtain and manage various communication services for the user based upon predetermined parameter thus making the system more robust and efficient. **(See column 1, Monga)**

Regarding claim 43,

Nagasawa and Betge teach the machine readable storage of claim 34.

Nagasawa and Betge do not explicitly teach wherein the generating comprises receiving a compliance percentage; and computing said estimated SLA breach value based upon the compliance percentage.

Monga teaches wherein the generating comprises receiving a compliance percentage; and computing said estimated SLA breach value based upon the compliance percentage. **(See column 2, lines 15-35, Monga teaches "interact with a service provider to negotiate "replacement" services for a breach of the SLA, interact with various network elements to rectify a breach of the SLA, interact with the service provider to dynamically modify the SLA based upon changing user requirements")**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Monga with Nagasawa and Betge because both deal with service level agreements and breaches. The advantage of incorporating wherein the at least one computer hardware device is configured to generate, using a compliance percentage, the estimated SLA breach value of Monga into Nagasawa and Betge is that the system interacts with the network to obtain and manage various communication services for the user based upon predetermined parameter thus making the system more robust and efficient. **(See column 1, Monga)**

Regarding claim 44,

Nagasawa and Betge teach the machine readable storage of claim 34.

Nagasawa and Betge do not explicitly teach wherein the estimated SLA breach value is a predicted value by which a predetermined compliance percentage can be achieved by employing the estimated SLA breach value with a service level agreement associated with the resource.

Monga teaches wherein the estimated SLA breach value is a predicted value by which a predetermined compliance percentage can be achieved by employing the estimated SLA breach value with a service level agreement associated with the resource. **(See column 2, lines 15-35 and column 4 lines 25-40, Monga)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have known to combine the teachings of Monga with Nagasawa and Betge because both deal with service level agreements and breaches. The advantage of incorporating wherein the estimated SLA breach value is a predicted value by which a predetermined compliance percentage can be achieved by employing the estimated SLA breach value with a service level agreement associated with the resource of Monga into Nagasawa and Betge is that the system interacts with the network to obtain and manage various communication services for the user based upon predetermined parameter thus making the system more robust and efficient. **(See column 1, Monga)**

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any response to this Office Action should be **faxed** to (571) 273-8300 or **mailed** to:

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P.O. Box 1450
Alexandria, Virginia 22313-1450

Hand-delivered responses should be brought to
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Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NINOS DONABED whose telephone number is (571)270-3526. The examiner can normally be reached on Monday-Friday, 7:30 AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter-Anthony Pappas can be reached on (571) 272-7646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. D./
Examiner, Art Unit 2444

/GREG C BENGZON/

Primary Examiner, Art Unit 2444